

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 166 of 1992
with
CRIMINAL REVISION APPLICATION No 61 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

MAHESHKUMAR U PATEL

Appearance:

MS BR GAJJAR APP for Appellant - State
MR HL JOSHI for M/S THAKKAR ASSOC. for Respondent
Nos. 1-3,7
MR JASHVANT SHAH for MR PS CHAMPANERI for Respondent
Nos. 4-5
MR RR VAKIL for Respondent No. 6
Respondent No.8 died during the pendency of the
appeal. Hence appeal against him is abated

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 22/11/2002

C.A.V. JUDGEMENT

1. The State Government has by preferring this appeal under Section 378(1) of the Criminal Procedure Code, 1973 [for short "Cr.P.C."] challenged the correctness and legality of judgment Ex.59 dated 6th December, 1991 rendered by the learned Chief Judicial Magistrate, Vadodara [who will be referred to hereinafter as the "learned Magistrate of the trial Court"] in Criminal Case No.2680 of 1987, by which all 8 accused, who are respondents in this appeal were acquitted under Sections 248(1) of Cr.P.C. of the offences punishable under Sections 143, 147, 148, 323 alternatively under Sections 324, 341, 427, 506(2) of the Indian Penal Code [for short "I.P.C."] and also under Section 135 of the Bombay Police Act [for short "B.P.Act"] for contravention of Section 37(1) of the B. P. Act.

1.1 From the record, it appears that Indian Dyestuff Industries Limited posing itself as original complainant has by filing Criminal Revision Application No.61 of 1992 under Section 397 of Cr.P.C. challenged that very judgment of acquittal by joining original accused Nos.1 to 8 as revision opponent Nos.1 to 8 and State of Gujarat as revision opponent No.9. From the record, it appears that no order appears to have been passed by this Court in proceeding of the said Criminal Revision Application No.61 of 1992.

1.2 From the record of this appeal, it appears that the original accused No.8 - Prakashchandra Bhagvanbhai Patel, who was residing abroad in America died in motor accident on 23rd November, 1999. The Police Sub-Inspector of Sayajiganj Police Station had sent a copy of death certificate issued by the Competent Authority of the Government of America together with certificate issued by Sarpanch of Nanafofar Gram Panchayat to the Registrar of this Court. In view of this, this appeal as against the respondent No.8 has already been abated under Section 394(1) of Cr.P.C.

2. The facts leading to this present appeal in a nutshell are as follows :-

2.1 The original complainant - Devendrakumar Shankarlal Joshi lodged his complaint in Sayajiganj Police Station, Vadodara City on 9th July, 1987 and as per that complaint, he is serving as Plant Engineer in IDI Company, situated in village Ranoli, since eight years before the date of complaint. As per the

complaint, there was a strike declared by employees union in the said IDI Company since 3rd June, 1987. The members of that employees' union were preventing other employees from going inside the premises of the Company for performing their respective duties and they were threatening them. They were also beating such employees, who were not joining with them in the strike. One incident of such beating the employees by the members of the employees' union had taken place on 27th June, 1987 and, thereafter, the employees of the said Company were reaching to the place of their service by travelling in the Bus under a police ascot. As an attempt of members of the employees' union were frustrated, they had assembled at S.T. Depot of Race Course at Vadodara at about 8.15 A.M. on 09.07.1987.

2.2 The complainant had gone to Race Course Depot as Bus Stop for bus of their Company, is also situated at that very place. The complainant had gone to that place so as to catch the bus of the Company to go to the Company to attend his duty. At that time, about 10 to 12 persons of that Company had assembled there, one of them was Mr.M.U.Patel [accused No.1], who came near the complainant and gave a threat that he would kill him, if he [complainant] would go to the Company for the purpose of service and further that he would also break his legs. At that time, the employees, who were on strike came there. Out of that employees, who were on strike, one was Mr.N.A.Shukla [accused No.7], who was armed with an iron chain, second was Mr.A.P.Raj [accused No.3], who was armed with an iron pipe, third was Mr.P.V. Patel [accused No.8], who was armed with black coloured "V" belt, and had worn black coloured cotton gloves, fourth was Mr.N.R.Parikh [accused No.6], who was armed with black wire, fifth was Mr.R.R.Patel [accused No.4], sixth was Mr.John Benz [accused No.2], who was armed with an iron rod. Mr.M.U.Patel [accused No.1] was not having with him any weapon. On seeing these persons, complainant got frightened. At that time, one Dr.Rao, Dr.K.S.Sriram, Mr.J.M.Bhatt and Mr.C.B.T.Ishwaran came there, at the place, where the complainant was standing. They gave courage to complainant to face the situation.

2.3 At about 8.20 A.M., the passenger bus of IDI Company arrived at the Company's Bus Stop, Dr.K.S. Sriram, Mr.J.M.Bhatt and Mr.C.B.T. Ishwaran could board the bus and following them, the complainant was trying to board the bus and behind the complainant, Dr.Rao was also to board the bus. At that time, Mr.N.R.Parikh [accused No.6] and Mr.R.R.Patel [accused No.4], both came there and caught hold the shirts of the complainant and Dr.Rao,

from behind and they took them out from the bus. Mr.G.I.Patel [accused No.5] pricked the valve of the wheel of the bus and caused the air to leak out from the wheel. Before complainant could understand as to what had happened, the accused Mr.Shukla had wielded the chain in the air, which came on the complainant and, therefore, the complainant caught hold of that chain. At that time, Mr.A.P.Raj [accused No.3] and Mr.John Benz [accused No.2] had beaten the complainant on his hand by inflicting blow of pipe and iron rod, as a result of which the chain, which was caught hold by the complainant got released from the grip of the complainant. Thereafter, Mr.N.A.Shukla [accused No.7] inflicted a blow of the chain on his abdomen, as a result of which the complainant had become bend and, thereafter, Mr.Shukla had inflicted a blow of chain on the face of the complainant, as a result of which, there was bleeding from the part near the mouth of the complainant. The complainant sustained injuries on chin, right cheek, abdomen, neck and two hands. At that time complainant's colleague Dr.Rao sustained hidden injuries on his face. Mr.P.V.Patel [accused No.8] inflicted a blow of "V" belt, on temple portion and right portion of neck. Mr.J.M.Bhatt sustained bleeding injuries. One Mr.K.C.Oza came there to rescue the complainant and while doing so, he sustained injuries on his left wrist. Mr.D.L.Joshi sustained hidden injuries on his face as well as abdomen. Mr.P.S. Shah sustained injuries on his abdomen and back portion as a result of infliction of blows of pipe as well as kick and fist and Mr.N.S.Barot had sustained injuries on back portion of neck by infliction of blows of kick and fist. Thereafter, accused, who were in number of about 10 to 12 persons and, who were on strike gave threat to the complainant as well as the injured witnesses that they would not allow them to keep alive, if they would go to the Company for the purpose of service. They also asked them not to dare to go to the Company for service and they would see as to for what period they would get a police escort. The complainant has stated in his complaint that he had seen other persons in group of employees of the union, which had declared strike, but he could not remember their names. He has also stated in his complaint that he would inform the police department as and when, he would remember names.

2.4 Thereafter, complainant went to his Family Doctor, Dr.G.R.Mehta residing in Mahisha Society and obtained preliminary medical treatment and as per his advice, he went to S.S.G. Hospital, Vadodara for further medical treatment. While complainant was in S.S.G.

Hospital, Vadodara, he lodged his complaint to Police Sub-Inspector, Sayajiganj Police Station, Vadodara and complainant signed that complaint. In the complaint, he has given the names of eight accused, who were members of the employees' union, which had declared strike against the management of Company. From the evidence of the Investigating Officer, it appears that the said complaint possibly might have been lodged at or around about 11.30 A.M. and that complaint came to be registered as C.R.No.I-774/87. The investigation of the said case was entrusted to P.W.11. P.S.I. Shri Jayaprakash B. Kadel. P.S.I. Shri Jayaprakash B. Kadel went to the scene of offence and drew a panchnama of the scene of offence. He recorded the statements of witnesses, who were conversant with the facts of the case. He, thereafter, collected medical certificates of the injured witnesses from the Civil Hospital, Vadodara. Thereafter, he arrested accused and recovered weapons from them. On completion of investigation, P.S.I. Shri Jayaprakash filed charge-sheet against all the accused in the Court of the learned Magistrate of the trial Court on 11th November, 1987. That charge sheet came to be registered as Criminal Case No.2680 of 1987.

3. The learned Magistrate of the trial Court framed charge at Ex.4 on 25th March, 1988 and recorded pleas of the accused. They have pleaded not guilty to the charge and claimed to be tried.

4. To prove the case against the accused persons, the prosecution examined the following eleven witnesses.

- i. P.W.1 Dr.Rozi Mathai, [Medical Officer who examined the injured witnesses] at Ex.15.
- ii. P.W.2 Mr.D. S. Joshi [complainant] at Ex.26.
- iii. P.W.3 Mr.Dhananjay L. Joshi at Ex.31.
- iv. P.W.4 Mr.K.C.Oza at Ex.32.
- v. P.W.5 Mr.D.D. Salekar at Ex.34.
- vi. P.W.6 Mr.L.P. Ghadghe, Ex.35.
- vii. P.W.7 Mr.K.K. Narayanan Raman [panch witness] at Ex.36.
- viii. P.W.8 Mr.N.S.Barot at Ex.38.
- ix. P.W.9 Mr.J.H. Mahant [panch witness] at Ex.39.

x. P.W.10 Mr.J.M.Bhatt at Ex.42.

xi. P.W.11 P.S.I., Shri Jayaprakash B. Kadel
[Investigating Officer] at Ex.46.

5. The prosecution has also produced the following documentary evidence along with the other documentary evidence to substantiate the case against the accused for which charge has been framed.

a. Seven medical certificates issued by Medical Officer, S.S.G. Hospital, Vadodara, who examined seven injured witnesses, namely [1] Mr.D.K. Joshi, [2] Mr.J.M.Bhatt, [3] Mr.P.S.Shah, [4] Dr.Rao, [5] Mr.D.N.Joshi, [6] Mr.Nareshchandra Shashikant Barot and [7] Mr.K.C. Oza at Ex. 16, 17, 18, 19, 20, 21 and 22 respectively.

b. Original complaint at Ex.27.

c. Panchnama of scene of offence at Ex.37.

d. Recovery panchnama of iron pipe produced by the accused No.2 Mr.John Advard at Ex.40.

6. On evidence led by the prosecution was over, the learned Magistrate of the trial Court explained to and brought to the notice of each accused by recording further statement of each accused, separately. From further statements of the accused, it appears that they have denied the entire prosecution case and, therefore, their defence is of a complete denial. They have advanced their defence that their union had declared a nonviolent strike against the Management of their Company. They are the leading members of the union and, therefore, with a view to see that chaotic condition takes place in the strike and observers of strike do not succeed in their strike, a false case has been lodged against them. The accused have neither led any evidence nor they have entered into witness box to give evidence on oath, in their defence. From the record, it appears that the learned advocate for the original complainant filed his written arguments through learned APP at Ex.57. On hearing, the arguments of the learned advocates for both the parties and on analyzing and appreciating the evidence on record, the learned Magistrate of the trial Court came to a conclusion that the prosecution has failed to prove the case against all the accused beyond reasonable doubt for the offences punishable under Sections 143, 147, 148, 323 alternatively under Section

324, 341, 427, 506(2) of the I.P.C. and also under Section 135 of the B.P.Act. On coming to such conclusion, the learned Magistrate of the trial Court by rendering his judgment at Ex.59 dated 6th December, 1991 acquitted all the accused under Section 248(1) of Cr.P.C. of the offences punishable under Sections 143, 147, 148, 323 alternatively under Section 324, 341, 427, 506(2) of the I.P.C. and also under Section 135 of the B.P.Act, for which charge was framed against them.

7. Being aggrieved against and dissatisfied with the aforesaid judgment of acquittal in favour of the accused, the State Government has preferred Criminal Appeal No.166 of 1992, while, as stated earlier, Indian Dyestuff Industries Limited claiming to be an original complainant has filed Criminal Revision Application No.61 of 1992 under Section 397 of Cr.P.C.

8. Ms.B.R.Gajjar, learned APP for the State i.e. appellant of Criminal Appeal No.166 of 1992 has taken me through the entire oral as well as documentary evidence led by prosecution in the case before the trial Court. Mr.H.L. Joshi, learned advocate representing respondent Nos.1, 2, 3 and 7 has taken me through the impugned judgment challenged in this appeal. I have heard Ms.B.R.Gajjar, learned APP for the appellant, Mr.H.L.Joshi, learned advocate for and on behalf of M/s.Thakkar Associates representing respondent Nos.1, 2, 3 and 7, Mr.Jashvant Shah, learned advocate for and on behalf of Mr.P.S. Champaneri, representing respondent Nos.4 and 5. Mr.R.R.Vakil, learned advocate for the respondent No.6 has remained absent through out the hearing of the appeal.

9. Ms.B.R.Gajjar, learned APP for the appellant State has argued that the learned Magistrate of the trial Court has not appreciated the evidence in its correct and perspective manner and further that looking to the evidence led by prosecution, the learned Magistrate of the trial Court ought to have held all the accused guilty for the offences, for which a charge was framed against them. She has further argued that the impugned judgment is wrong, erroneous and unsustainable. She has further argued that this Court is empowered to reappraise the evidence on record and come to a contrary conclusion to the effect that the prosecution has ably proved the case against all the accused and thereby, this Court should convict and sentence all the accused by allowing the appeal filed by the State Government. In support of her arguments, she has cited an authority of Narayan Chetanram Chaudhary and another Vs. State of

Maharashtra, reported in AIR 2000 S.C. 3352. From this authority, she has read para-40, which appears at Page No.3368 and argued that the omissions found in the evidence of injured witnesses are trivial and cannot be considered as major contradictions. She has further argued that the discrepancies, which appeared in the evidence of witnesses, cannot be said to be a material discrepancies and evidence of prosecution cannot be thrown over, board on highlighting such discrepancies as major contradictions.

10. In reply to the aforesaid arguments, Mr.H.L.Joshi, learned advocate appearing for respondent Nos.1, 2, 3 and 7 and Mr.Jashvant Shah, learned advocate appearing for respondent Nos.4 and 5 have supported the judgment challenged in this appeal. They have argued that learned Magistrate of the trial Court has correctly and properly appreciated the evidence on record, keeping in mind well settled principles of law with regard to appreciation of evidence. They have further argued that it is not sufficient to show by the appellant that the impugned judgment is wrong, erroneous and unsustainable. They have argued that this Court being Appellate Court is required to seek an answer to the question whether the findings of trial Court are [i] palpably wrong, [ii] manifestly erroneous or [iii] demonstrably unsustainable. They have further argued that the conclusion of the appellate Court that legitimately on reappraisal of evidence, another view than one taken by the trial court is possible, cannot constitute a valid and sufficient ground to interfere with acquittal order. Mr.Joshi has cited the following authorities :-

- [1] Harijana Thirupala and others Vs. Public Prosecutor, High Court of A.P., Hyderabad, reported in 2002 Supreme Court Cases (Criminal) 1370 - relevant paras 12 and 16.
- [2] Kalyan and others Vs. State of U.P., reported in 2002 Supreme Court Cases (Criminal) 780 - relevant paras 8, 9 and 19.
- [3] Thanedar Singh Vs. State of M.P., reported in 2002 Supreme Court Cases (Criminal) 153 - para-14.
- [4] Kashiram and others Vs. State of M.P., reported in 2002 Supreme Court Cases (Criminal) 68 relevant para 21.

[5] Patel Hiralal Joitaram Vs. State of Gujarat, reported in 2002 Supreme Court Cases (Criminal) 1 - relevant para 11.

[6] Jaipal and another Vs. State of U.T. Chandigarh, reported in 1998 Supreme Court Cases (Criminal) 1593 - relevant para 4.

[7] Garasia Ratubha Hanubha and another Vs. State of Gujarat, reported in 1997 Supreme Court Cases (Criminal) 195.

I have considered the submissions made by both the parties. I have carefully gone through and examined the evidence on record. I have reappreciated the same to come to my own conclusion.

11. Before, I deal with the submissions and evidence on record, I would like to place on record the scope and ambit of Section 378 of Cr.P.C. and powers of the Appellate Court, which can be exercised, while dealing with the acquittal appeal.

12. In case of Ramesh Babulal Doshi Vs. The State of Gujarat, reported in 1996 (2) G.L.H. 206 [S.C.], it has been held in para-7 by the Hon'ble Supreme Court as follows:-

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

13. In another case of Ajitsavant Majagvai Vs. State

of Karnataka, reported in 1997 Supreme Court Cases (Criminal) 992, the Hon'ble Supreme Court has laid down certain principles which govern and regulate the hearing of the appeal by the High Court against an order of acquittal passed by the trial Court in para-16. It has been held as follows :-

" This Court has thus explicitly and clearly laid down the principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial court. These principles have been set out in innumerable cases and may be reiterated as under :

[1] In an appeal against an order of acquittal, the High court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

[2] The High Court has the power to reconsider the whole issue reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

[3] Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

[4] In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

[5] If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be

adopted.

[6] The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanor of witnesses and observing their conduct in the court especially in the witness-box.

[7] The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused."

14. Keeping in mind the aforesaid legal position with regard to ambit and scope of Section 378 of Cr.P.C. under which acquittal appeal can be filed and the principles with regard to powers of the appellate court, which can be exercised in dealing with the appeal against the acquittal judgment rendered by the trial Court. Now we will discuss the evidence on record.

14.1 On reading complaint at Ex.27 lodged by P.W.2 Shri Devendrakumar Shankarlal Joshi. The following persons were beaten by the accused as a result of which they sustained minor and major injuries.

[1] Complainant himself.

[2] Dr.B. V. Rao.

[3] J. M. Bhatt.

[4] Mr.K. C. Oza.

[5] Mr.D. L. Joshi.

[6] Mr.P. S. Shah.

[7] Mr.N. S. Barot.

Out of the aforesaid seven injured persons, the prosecution has examined only five injured witnesses and dropped two injured witnesses namely [1] Dr.B. V. Roa and [2] Mr.P.S. Shah. The prosecution has produced an injury certificate at Ex.18 for injury, sustained by

Mr.P.S. Shah and an injury Certificate at Ex.19 for injury, sustained by Dr.B. V. Rao. No reasons are assigned by the prosecution for dropping these two important eye witnesses, when evidence was declared to be closed by the prosecution. As per rojakam, the prosecution declared that their evidence was over, on 18th September, 1990.

15. I have kept in mind the different principles settled by the Hon'ble Supreme Court in cases cited by Mr.H.L.Joshi, learned advocate for the respondent Nos.1, 2, 3 and 7.

16. The prosecution has examined the complainant Devendrakumar Shankarlal Joshi as P.W.2, at Ex.26. He has deposed in his evidence that he is serving as a Plant Engineer in IDI Company and, there was a strike declared by employees on 3rd September, 1987. The employees, who were on strike were preventing and beating the employees, who in fact wanted to go to Company for performing their duty and such type of untoward incident had taken place on 27th June, 1987. He has further deposed that the incident [of this case] took place on 9th July, 1987. He had gone to S.T. Workshop where he parked his Scooter and, thereafter, he was to take sit in the passenger bus, which was being plied by the Company. He has further deposed that at that place, about 10 to 15 persons, had come there, one of them was Mr.N. A. Shukla, second was Mr.N.R.Parikh and third was Mr.A.P.Raj. He has also deposed that accused Nos.1, 2, 3, 5, 8 and other accused were also standing there. He has further deposed that accused No.6 N.R.Parikh had come to him and threatened him that if he would go to attend his service, he would be beaten and his legs would be broken. In general, he has deposed that accused had inflicted blows with iron pipe and chain. It was not specifically deposed by him that what type of weapon, was held by each accused. He has deposed that though he was threatened, he proceeded further towards the passenger bus of the Company and after bus took a turn, he was about to board the bus and at that time accused No.6 Mr.Parikh caught hold him from behind and brought him out from the bus and at that time, accused No.7 Mr.N.C.Shukla inflicted a fist blow near nose below the right eye. He has further deposed that accused No.3 Mr.A.P.Raj also inflicted a fist blow on his lip, as a result of which, there was a bleeding from the lower lip. He has further deposed that he tried to run away from the place, but accused had cordoned him and, thereafter, accused Nos.2 and 5 i.e. Mr.John and Girish Patel, both started to beat him on his back portion with pipe and they inflicted blows of pipe on both the sides

of the waist. He has deposed that at that time, accused No.8, by driving motor cycle, rushed towards him from Ilora - Park, as a result of such incident, the persons had gathered there and, thereafter, all the accused had run away on motor cycle and scooter. He has further deposed that out of accused, as some had tried to inflict the blow with pipe, but he had raised his hands to prevent the blow, he has sustained injury on his hand. He has further deposed that along with him one Dr.Rao, Mr.J.M.Bhatt, Mr.K.S.Shriram, Mr.Joshi and Mr.J.M.Bhatt were beaten by assailants with the help of belt. He has further deposed that at that time his friend was passing by driving a Maruti Car and, therefore, his friend took him into Maruti Car and he was taken to hospital of Dr.J.R.Mehta, who gave a preliminary treatment and, thereafter, he went to S.S.G. Hospital, Vadodara where he was treated. He has further deposed that in S.S.G. Hospital, Police recorded his complaint, which is at Ex.27. According to him, the incident took place at about 8.15 A.M.

16.1 In the cross-examination, he has deposed that after lodging his complaint in S.S.G. Hospital, he had gone to Sayajiganj Police Station, Vadodara where his statement was recorded and police had taken the signature below that statement. He has deposed in his evidence that on the date of incident, he was working in Thallic and Hydraulic Plant. He has further deposed that about 1400 to 1500 employees were working in IDI Company. He has specifically admitted that none of the accused was working with him, in his department. The learned advocate for the accused has brought certain material and significant contradictions on record in para-6 of his deposition. He has admitted that he has not stated in his complaint that Mr.Shukla inflicted blow near his nose below the right eye. He has also admitted that he has not stated in his complaint that another fist blow was inflicted by accused No.4 on his lip and there was a bleeding from that part. He has further deposed that it was true that he has not stated in his complaint that after he was beaten he tried to run away from the place. He has admitted that because of assault being landed on him, there was profuse bleeding from the injured part of his body and as a result of such bleeding his clothes were blood stained. It may be noted that the prosecution has not produced any clothes worn by the injured witnesses, at the relevant point of time of incident. He has also admitted that in the police statement, he has not stated that while he was boarding the bus, the accused had caught hold him and dragged him down from the bus. He has also admitted that it is true that he has

not stated in his complaint that he sustained injuries of pipe blow which was inflicted by accused Nos.2 and 5 and sustained injury on his back portion and abdomen. He has also admitted that he has not stated in his complaint that at that time, accused No.8 Mr. Prakash Patel rushed on motor cycle towards him from Ilorapark. He has also admitted that he has not stated in his complaint that after incident, all the accused had run away on motor cycle and scooter. He has further categorically deposed that within one hour, after incident, they gave first report to the police. The incident took place at about 8.15 A.M. From the evidence of Investigating Officer at Ex.46, it is revealed that he came to know about the incident at about 11.30 A.M. and, therefore, on reading evidence of the complainant together with the evidence of Investigating Officer, it appears that the prosecution has withheld some best available evidence of first report which complainant had lodged, within one hour from occurrence of the incident.

16.2 Looking to admission made by the complainant in his evidence with regard to non-mention of certain facts in his police statement, which he has deposed in his examination-in-chief, it appears that the evidence of complainant is not trustworthy and dependable because he has involved accused No.3 Mr.A.P. Raj by stating against him that he had inflicted a fist blow on his lip. He has also roped in accused No.8 Mr.Prakash Patel by not stating against him in police statement that he rushed on him by travelling motor cycle from Ilorapark area. It appears from the evidence of the complainant that tendency of the complainant is to implicate the persons as accused in his evidence for whom he did not state anything in his complaint or police statement. According to him, he sustained injuries near nose below the right eye, lower lip, back portion and abdomen. If we peruse the medical certificate at Ex.16 read with evidence of Dr.Rozi Mathai at Ex.15, we find that there was a swelling and one abrasion on lower lip. Injury Nos.1, 2 and 8 are the injuries on his two arms for which he has not stated anything as to who inflicted the said injuries. The incident took place at about 8.20 A.M. and he was examined by Dr.Rozi Mathai at 10.45 A.M. As per the complaint at Ex.27, immediately after incident, he went to his Family Doctor, Dr.G.R.Mehta, who is residing in Manisha Society and he took a preliminary medical treatment from his family Doctor and, thereafter, he went to S.S.G. Hospital, Vadodara, where he was treated by the Doctor. The prosecution has not examined Dr.G.R.Mehta, who is a family Doctor of the complainant, who treated the complainant first in point of time

immediately after the incident. This complainant has categorically stated in para-7 of his evidence that within one hour from the occurrence of incident, they gave a first report, we do not know what complainant stated in that first report. Under the circumstances, the complaint at Ex.27 cannot be said to be a complaint under Section 154 of Cr.P.C.

16.3 This complainant has deposed that about 1400 to 1500 employees are working in his Company and that none of the accused was working under him in his department and, therefore, naturally, he cannot have knowledge about the names of the accused. In spite of this fact, in complaint, he has given the names of eight accused, who are the office bearers of the rival union which had declared a strike against the management of the Company. This Court is of the view that the prosecution has purposely withheld the first report, which was given by complainant to Police within one hour from the occurrence of incident. If that report would have been produced by the prosecution perhaps, it would have appeared that no names of the accused had been given by the complainant in that report and that is why that report is withheld by the prosecution. Evidence of the prosecution is to be appreciated in its totality and not in isolation and in view of this, when the complainant and his colleagues, who were injured by assailants, it would be hazardous and risky to hold the accused guilty for the offences. In this type of cases, when witnesses were not knowing the assailants by their names, it was a prime duty of the Investigating Officer to hold an identification parade immediately after arrest of the accused, but in this case, no such attempt appears to have been made by the Investigating Officer to arrange for identification parade to ascertain the correct persons, who had landed assault on the complainant and his colleague.

17. Likewise, if we examine the evidence of another injured witness, P.W.3 Mr.Dhananjai L. Joshi, [Ex.31] we find that this witness has, in a natural course admitted that it was true that in his police statement, he has stated that he was not knowing the employees by their names, but he knows them on seeing them. Under the circumstances, whatever evidence has been given by this witness in his examination-in-chief by giving names of the accused, is not reliable because this witness had, at earliest point of time stated before the police that he was not knowing the assailants by their names. The learned advocate, who appeared for the accused in the trial Court, brought certain contradictions on record by referring a police statement. He has deposed in his

evidence that it was not true that he did not state before police that Mr.R.R.Patel and Mr.N.R.Parikh were asking the employees who had already boarded the bus to alight from the bus. When this witness was not knowing the names of the assailants, his evidence is of a very little value because for the first time in his evidence, he has stated the names of the accused, in absence of any evidence with regard to identification parade. The evidence of this witness does not inspire any confidence. This witness has admitted in his cross-examination that about 1400 employees are working in IDI Company and none of the accused was working under him, in his department. In view of this fact, it is not possible for him to identify the assailants by giving their names.

18. The third injured witness is P.W.4 Mr.Krushnachandra Chhotalal Oza [Ex.32]. He has admitted in his cross-examination that he is working in Production Department and none of the accused was working directly under him. He has admitted in his evidence that when evidence of complainant was being recorded, he was very much present in the Court room and, therefore, it was easy for him to identify the accused by giving their respective names. In view of this, he might have identified three accused namely [1] Mr.M.U.Patel, [2] Mr.John Benz and [3] Mr.A.P.Raj in Court-room.

19. The fourth injured witness is P.W.8 Mr.Nareshbhai Shashikant Barot, at Ex.38. He has admitted in his cross-examination that he is working in Purchase Department of IDI Company and none of the accused was working in Purchase Department. It is his say that accused were working in the plant and that he has no relation whatsoever with the accused, either of taking tea with them or to go for picture in company of any of the accused. He has further deposed that about 1500 persons are working in IDI Company and in view of that fact he has truly stated in his deposition that he does not know any of such employees by their names. He has admitted in his cross-examination that he did not state before police that Mr.Parikh had boarded the bus and that accused were asking them to alight from the bus. He has also admitted in his cross-examination that he did not state before the police that accused had threatened and asked them not to go for their duty otherwise their legs would be broken. With regard to giving of threats, this witness did not state anything before the police. He has also admitted in his evidence that he did not state before the police that on receiving a fist blow, he sat down by holding his hand and meanwhile, other persons had inflicted blows of kick and fist. This witness has

categorically admitted that his statement recorded by the police after 15 to 20 days. If really he was treated in S.S.G. Hospital, Vadodara, the police could have certainly recorded the statement of this witness on that very day. P.W.1 Dr.Rozi Mathai, Ex.15 has nowhere stated in her evidence that the injured persons were admitted in her hospital as an indoor patients and they were discharged later on after 9th July, 1987. When prosecution has come with a specific case, that complainant lodged his complaint in the hospital and if this witness Naresh Shashikant Barot was taking treatment in hospital, the police could have recorded his statement at the earliest point of time in the hospital on the day on which complainant lodged his complaint. But looking to the evidence of witness Naresh Shashikant Barot, his statement was recorded after 15 to 20 days. This fact raises a serious doubt that any how this witness has been brought forward by the prosecution to implicate the accused. By advancing a story that accused No.7 N.A.Shukla had caused injury to him by cycle chain. He has admitted in his evidence that because of beating him, there was a bleeding from the part of his body where he sustained injury. No clothes of this witness have been attached by Investigating Officer and, therefore, this witness is also not a reliable witness. His evidence does not inspire confidence.

20. The fifth injured witness is P.W.10 Janakrai Maneklal Bhatt, [Ex.42]. He has admitted in his examination-in-chief that he does not know the names of the assailants, who had beaten them. He has also admitted in his evidence that he cannot say with certainty the names of the assailants by giving their names. During the course of recording his evidence, he was shown the accused present before the Court and on seeing them, he has deposed that he felt that out of them one or two were amongst that assailants and he did not know as to what part was taken by this one or two accused. Looking to this evidence, his evidence is not corroborated with the evidence of the complainant and other witnesses.

20.1 For all these five witnesses, P.W.1 Dr.Rozi Mathai has deposed that injuries sustained by each of the aforesaid injured witnesses were simple in nature and that such injuries could be possible by hard and blunt substance. In the cross-examination, she has deposed that if some one would fall down while boarding the bus and if that person is dashed with some part of the bus, the injuries stated by her could be possible. Under the circumstances, the entire evidence of prosecution does

not inspire confidence.

21. The prosecution has examined, I.O. P.W.11 Jayprakash Balmukund Kadel, at Ex.46. According to his evidence Devendrakumar Shankarlal Joshi lodged his complaint Ex.27, in Sayajiganj Police Station, Vadodara. He has further deposed that the investigation was handed over to him. He drew a panchnama of the scene of offence and recorded a statements of concerned witnesses. He collected medical certificates with regard to injuries sustained by these witnesses. He arrested the accused in presence of panch witnesses and recovered the respective weapons from the accused and on completion of the investigation, he filed a charge sheet in the Court. This witness has deposed in his cross-examination that he had gone to the place of incident for drawing the panchnama of scene of offence and according to him, the scene of offence is situated near Circle of Race Course in Alkapuri Area of Vadodara. He has also admitted that some Pan Gallas and Hand-Carts and Tea of other eatables were found nearby the scene of offence and this was a place where there was a movement of traffic. He has admitted that he had recorded the statements of persons from public as well as traffic. He has not examined any independent witness from public. He came to know about the incident at about 11.30 A.M. He has also admitted that in this case no identification parade of assailants was held. According to him, the witnesses had identified the accused in his presence. He has admitted that the witnesses had identified the accused after he arrested the accused. Therefore, this evidence is of no value because the witnesses could certainly identify the persons, who were in the police custody. He has not recorded the statements of any third independent person in whose presence, the witnesses had identified the accused, when they were in police custody. He has proved the contradictions which appeared in evidence of Mr.Dhananjay, Krushnachandra and Naresh Barot. He has admitted in his cross-examination that the injured witnesses were not sent to S.S.G. Hospital, Vadodara with police Yadis. According to him, a vardhi was received from Sayajiganj Hospital. What was that vardhi, is not explained by him. It is a uniform practice prevailing in police station that as and when vardhi is given from the hospital, it is being generally written down in Station Diary or Vardhi Book. Herein this case, no such "vardhi" is produced and, therefore, the prosecution has tried to withhold best available evidence for the reasons best known to it.

22. The learned Magistrate of the trial Court, as

stated in his judgment, analyzed and appreciated the evidence and by giving cogent and possible reasons came to a conclusion that the witnesses were not reliable. Whatever the reasons have been assigned by him, cannot be said to be contrary to the evidence. The grounds for not accepting the evidence of witnesses examined by the prosecution, are stated in detail in para-5 of his judgment.

23. I am in full agreement with the reasons assigned by the learned Magistrate of the trial court for not accepting the case of the prosecution. On analyzing and reappreciating the evidence, I am of the view that no other view is possible. The view expressed by the learned Magistrate of the trial Court is quite probable and possible, considering the evidence on record.

24. I have carefully examined the evidence on record and reappreciated the evidence and I am of the view that the findings reached by the learned Magistrate of the trial Court, in no case, can be said to be unreasonable findings. Ms.B.R.Gajjar, learned APP for the appellant State is unable to dislodge the findings arrived at by the learned Magistrate of the trial Court. There is no material on record to dislodge the reasons given by the learned Magistrate of the trial Court. The learned Magistrate of the trial Court had full advantage of observing the conduct and demeanour of the witnesses, who gave evidence before him and, therefore, he was in a better position to appreciate the evidence of the witnesses, who gave evidence before him. Looking to the nature of evidence led by the prosecution in no case, it can be said that approach and conclusion of the trial Court is perverse and vitiated by any serious error. The view taken by the learned Magistrate of the trial court, in my view is a reasonable and possible view.

25. In view of the aforesaid discussion, the learned Magistrate of the trial Court has rightly acquitted the accused of the offences for which the charge was framed against them. In view of this, this appeal as well as Criminal Revision Application deserve to be dismissed and accordingly, both are dismissed. The judgment at Ex.59 dated 6th December, 1991 rendered by the learned Chief Judicial Magistrate, Vadodara in Criminal Case No.2680 of 1987 is confirmed. The muddamal articles be destroyed as per the directions given by the learned Magistrate of the trial Court in operative part of his judgment. Bailable warrants issued pursuant to the order dated 29th July, 1993 of this Court shall stand cancelled.

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